

2010 WL 9432987 (Ga.Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of Georgia.
Cobb County

Jewell "Judy" D. COX, Plaintiff,

v.

Frank L. CONSTANTINO a/k/a Frank Constantino, Atrium Secure Annuity, LLC., Atrium Investment Partners, LLC, Exotic Caye Bank a/k/a Caye International Bank, Atrium Land Trust, Vision Capital Company, Belize Land and Development Company, World Vision Communications, Ltd., Plantation Marina and Yacht Club of Belize, Belize Land and Investment Trust, Globe **Financial** Solutions, LLC, Atrium Global Partners, Mayan Lagoon Estates, Ltd., and Placenia Land and Development, Inc., Defendants.

No. 06-1-6251-33.
March 19, 2010.

Plaintiff's Memorandum of Law in Support of her Motion for Partial Summary Judgment as to Count III

The Barnes Law Group, LLC, [John F. Salter](#), Ga. Bar No. 623325, Attorney for Plaintiff, The Barnes Law Group, LLC, 311 Atlanta Street, Marietta, Ga. 30060, Telephone: 770-419-8505, Facsimile: 770-590-8958

Plaintiff Judy Cox (hereinafter "Cox") submits the following memorandum of law in support of her Motion for Partial Summary Judgment against Defendant Frank Constantino as well as the other named Corporate Defendants.

STATEMENT OF FACTS

A. BACKGROUND

The Plaintiff, Judy Cox, was defrauded by Defendant Constantino. In early 2002, Cox was approximately seventy-five (75) years of age or older. She became acquainted with Defendant Comstantino after being referred to him for estate planning. Using a myriad of corporate entities¹ and opaque investing transactions, the Defendant enriched himself by stealing the hard-earned savings of an **elderly** woman. Cox invested more than \$2.7 Million in what she believed were "investments," relying upon presentations and assurances of Defendant Constantino. By the time Cox realized something was dreadfully wrong, it was too late. Judy Cox was the victim of a "confidence" man.

Defendant Constantino has now been convicted by a Cobb County jury of defrauding Cox. The jury found Constantino guilty of a comprehensive pattern of theft and securities violations.² Most importantly, the jury returned a "guilty" verdict as to Count One of the Indictment, a count under the Georgia RICO Act that spanned all of the alleged "schemes" used by Defendant Constantino to defraud Cox of monies totaling more than \$2.5 Million.

In all respects, the criminal trial of Defendant Constantino involved substantially the same issues as this case. The victim was the same: Judy Cox. The discrete frauds presented to the jury concerned the same three schemes pled in the original Verified Complaint filed by Judy Cox in July, 2006: (1) the Caye Bank Scheme; (2) the Plantation Villas Scheme; and (3) the Plantation Marina and Yacht Club of Belize Scheme. In particular, Count III of Cox's Second Amended Complaint, an action under Georgia's RICO Act, relies upon the same allegations and operative facts as Count One of the Indictment. Both of these counts travel under the same statutory provision: a violation of Georgia's RICO Act. *Compare* Indictment Count One

with 2nd Amended Complaint. Thus, the underlying factual issues of the criminal case were exactly the same as those at issue in this civil action.

The criminal conviction proved substantially the same factual matters that Plaintiff set out to prove in this civil action. Moreover, the evidence was sufficiently powerful as to establish guilty beyond a reasonable doubt. The conviction of Defendant Constantino for a violation of Georgia RICO in Count One of the Indictment makes it unnecessary to have a trial on Count III of Cox's 2nd Amended Complaint. For reasons discussed more *infra*, Georgia law mandates that the criminal conviction establishes a conclusive right to judgment on Count III of Cox's 2nd Amended Complaint.

B. THE CAYE BANK SCHEME

On February 26, 2003, upon the insistence and request of Constantino, Judy entered into an agreement entitled "Carye Bank Stock Purchase Agreement." 2nd Amended Complaint, ¶ 6; Indictment, ³ Count One, p. 4. Judy delivered to Constantino the sum of \$500,000 in two installments. 2nd Amended Complaint, 6; Indictment Count One, 4. The first installment was on February 28, 2003, in the amount of \$50,000. Indictment, Count Three, p. 11. The second installment was on March 1, 2003, in the amount of \$450,000. Indictment, Count Four, p. 12. Both of the installments above were made to one of the Corporate Defendants, entities controlled and used by Constantino for his fraudulent schemes. Constantino told Plaintiff Cox the \$500,000 was for a deposit with a six (6%) percent "guaranteed" return that was to be paid quarterly. Further, Constantino told her there was no risk in the deposit and that the deposit was insured against loss. Constantino knew that when he made the above statements they were false. Constantino made such statements with intent to defraud!. Judy relied upon the above-described statements to her detriment and suffered a loss of \$500,000. The Stock Purchase Agreement regarding the Caye Bank securities were sold in the State of Georgia without registration or, approval and by an unlicensed person, in violation of the Georgia Securities Act of 1973 found at [O.C.G.A. § 10-5-1, et seq.](#) As a result of his actions regarding the Caye Bank Scheme and the damage it caused Judy Cox, Constantino was convicted by a jury in the Superior Court of Cobb County of acts of racketeering in violation of the Georgia RICO Act (Count One), as well as securities violations (Count Two), theft by taking (Counts Three & Four), and **exploitation** of an **elder** person (Count Six).

C. THE PLANTATION VILLAS SCHEME

Cox's next "investment" with Constantino was for the Plantation Villas in Belize. In order to induce Cox to invest with him, Constantino made the following representations to her:

- (a) the development called "The Plantation" was started in 1998 and in four years there had been more man 300 residential lots sold for cash;
- (b) that all roads were complete;
- (c) that all underground electricity had been placed and was present;
- (d) that homes sold for \$180,000 to \$1.5 million without land;
- (e) that a premier hotel was being, built and was about to be completed;
- (f) that Calico Jack's Restaurant and Bar and a small hotel was already built and operating;
- (g) that a jet runway was near completion;
- (h) that a marina and yacht club was near completion;

- (i) that the project was over 70% complete;
- (j) that about 20 homes were under construction ranging from \$180,000 to \$1.5 million.
- (k) that there was a 50 person waiting list for such homes;
- (l) that there was no risk and the principal was guaranteed;
- (m) that a 42.4% per year interest rate was assured and there was no risk of loss; and
- (n) that Constantino was acquiring the Plantation Villas site for construction for \$2.5 million.

As found by the jury, at least some of the above representations were false, were known by Constantino to be so, and were made with an intent to mislead, **exploit**, and commit a theft against the Plaintiff, Judy Cox. See, e.g., Indictment, (Count Eight) p. 14. In reliance upon these representations, Cox transferred \$1,150,000 to Belize Land and Development. 2nd Amended Complaint, ¶¶ 12-17; Indictment, Count One, p. 5. The payment was made by Cox to one of the entities controlled and used by Constantino for his fraudulent schemes. As a result of his actions regarding the Plantation Villas Scheme and the damage it caused Cox, Constantino was convicted by a jury in the Superior Court of Cobb County of acts of racketeering in violation of the Georgia RICO Act (Count One), as well as securities violations (Counts Seven and Eight), theft by taking (Count Nine), and **exploitation** of an **elder** person (Count Twelve).

D. PLANTATION MARINA AND YACHT CLUB OF BELIZE SCHEME

The next "investment" Cox made at the insistence of Constantino was for the Plantation Marina and Yacht Club of Belize. Defendant Constantino told Cox this investment was for a marina and yacht club for the Plantation Villas described above. The "investment" in the Plantation Marina and Yacht Club was "purchased" by Cox in two ways: one was a payment to Belize Land and Investment and the second was a purchase by Cox in World Vision Communications, Ltd. (hereinafter "World Vision") which in turn Constantino represented owned stock in the marina and yacht club. Constantino reiterated to Cox the same representations regarding the Plantation Marina and Yacht Club of Belize. Constantino represented a lot was sold in the Plantation Marina and Yacht Club of Belize, however, no proceeds from such sale have been accounted for. Based upon the representations of Constantino, Cox transferred a total of \$1,137,666 to Constantino for the Plantation Marina and Yacht Club of Belize. The payments were made by Cox to one of the entities controlled and used by Constantino for his fraudulent schemes. As a result of his actions regarding the Plantation Marina and Yacht Club of Belize Scheme and the damage it caused Cox, Constantino was convicted by a jury in the Superior Court of Cobb County of acts of racketeering in violation of the Georgia RICO Act (Count One), as well as several securities violations (Counts Fifteen, Sixteen and Seventeen).

E. PLAINTIFF'S ACTUAL DAMAGES HAVE BEEN PROVEN AND ESTABLISHED

As a direct result of Constantino's deception, Cox lost the sum of \$2,787,666 as follows:

- (a) Caye Bank Scheme: \$500,000;
- (b) Plantation Villas Scheme: \$1,150,000;
- (c) Plantation Marina and Yacht Club of Belize Scheme: \$1,137,666.

Following Constantino's conviction and as part of his sentencing, the Superior Court of Cobb County found the evidence proved Cox sustained monetary damages. Accordingly, the Court fixed restitution to Plaintiff Cox in the amount of \$2.5 Million.

See "Addendum A," attached to Sentencing and Jury Verdict, Ex. "C" (fixing restitution of \$2.5 Million as special condition of probation pursuant to O.C.G.A. § 42-8-34.1). The Court expressly found that the amount of restitution was based upon a preponderance of the evidence at trial. *See* Excerpt from Sentencing Hearing Transcript, 32, attached as Ex. "D" ("I find by a preponderance of the evidence that he [Defendant Constantino] owes restitution in the amount of two point five million dollars.").

The evidence at trial also proved that the Corporate Defendants, (if they exist at all), were artifices used by Constantino to defraud Judy. The corporate or partnership defendants were not separate corporate entities. To the contrary, the Corporate Defendants were merely "fronts" for Constantino's schemes. The evidence in the criminal trial proved that once Cox's money was taken, Constantino "layered" the funds through a series of consideration-less account transfers. The ultimate destination of the funds were bank accounts controlled by Defendant Constantino and used for his own personal enrichment. See Excerpt from Sentencing Hearing Transcript, 14-18, attached as Ex. "D" (forensic accountant's testimony tracing funds of investors, including Judy Cox, through multiple bank accounts where it was commingled with personal income before being used to pay mortgage of Defendant Constantino and Sandra Newhouse). The Corporate Defendants, whether fictitious or not, were used by Defendant Constantino to hide the fact that Cox's money was being diverted in order to **finance** an extravagantly lavish lifestyle for Defendant Constantino and his wife, Sandra Newhouse.

The intermingling and intertwining of Defendant Constantino's own **finances** with that of the Corporate Defendants and entities he created and (directly or indirectly) controlled was proved extensively during the criminal trial and is sufficient to remove any pretense that the Corporate Defendants were truly separate business interests. Thus, despite the fact that Cox's fund transfers were made indirectly to Defendant Constantino through entities he controlled, the jury necessarily found that these transactions were simply thefts by Defendant Constantino. Therefore, Cox's allegations in paragraph 28 of the 2nd Amended Complaint, regarding the "piercing of the corporate veil" for the Corporate Defendants, were: proved in the criminal proceeding by the conviction of Defendant Constantino.

ARGUMENT AND CITATION OF LEGAL AUTHORITY

A. LEGAL STANDARD

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. The party moving for summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact. The opposing party must then designate specific facts that show that there is a genuine, triable issue. A party failing to oppose a motion for summary judgment waives the right to controvert any facts asserted by the moving party in its motion or in the supporting materials accompanying it.

B. AS A MATTER OF LAW, DEFENDANTS ARE COLLATERALLY ESTOPPED FROM RELITIGATING THE FACTS RELEVANT TO COUNT III OF THE SECOND AMENDED COMPLAINT

The Defendants are collaterally estopped from contesting the merits of Cox's civil RICO claim. This estoppel is a product of statutory command. The General Assembly promulgated O.C.G.A. § 16-14-6(e) to provide civil remedies available to persons injured as a result of an offense proscribed under the Georgia RICO Act. That law provides, in relevant part, "a conviction in any criminal proceeding under this chapter *shall* estop the defendant in any subsequent civil action or proceeding as to all matters proved in the criminal proceeding." O.C.G.A. § 16-14-6(e) (emphasis supplied). "In its ordinary signification, 'shall' is a word of command." *Allen v. City of Atlanta*, 235 Ga.App. 516, 517, 510 S.E.2d 64 (1998). The mandatory language of this statute requires this Court to grant Cox's motion for partial summary judgment "as to all matters proved in [Defendant Constantino's] criminal proceeding."

Believing there to be an apparent absence of Georgia judicial precedent interpreting O.C.G.A. § 16-14-6(e), Cox's Counsel has researched how federal courts have interpreted a compilable, albeit narrower, provision contained in the federal RICO statute.⁴ The federal case law abounds with decisions under RICO granting preclusive effect to criminal convictions or pleas of guilty. *See, e.g., Buchanan County, Virginia v. Blankenship*, 496 F.Supp.2d 715 (W.D. Va. 2007); *Fireman's Fund Ins. Co. v. Stites*, 258 F.3d 1016 (9th Cir. 2001); *County of Oakland v. City of Detroit*, 776 F.Supp. 1211 (E.D. Mich. 1991); *County of Cook v. Lynch*, 560 F.Supp. 136 (N.D. Ill. 1982); *Anderson v. Janovich*, 543 F.Supp. 1124 (W.D. Wash. 1982); *Corporacion Insular de Seguros v. Reyes Munoz*, 849 F.Supp. 126 (D. Puerto Rico 1994).

The procedural mechanism by which a plaintiff moves to establish facts as proven under O.C.G.A. § 16-14-6(e) is a motion for partial summary judgment. "It is well-established in this Circuit that collateral estoppel may compel a grant of summary judgment as to the factual issues resolved by the earlier judgment." *County of Cook*, 560 F.Supp. at 140. Numerous decisions have awarded summary judgment to a plaintiff on the basis of federal RICO's estoppel provision following a defendant's criminal conviction or plea. *Buchanan County, Virginia v. Blankenship*, 496 F.Supp. at 719, (awarding summary judgment to plaintiff can grounds of collateral estoppel under federal RICO statute); *County of Oakland v. City of Detroit*, 776 F.Supp. at 1215 (RICO conviction entitled plaintiff to finding of collateral estoppel and awarding partial summary judgment in plaintiff's favor). Notably, the scope of the criminal prosecution determines the extent of the estoppel. Therefore, not only liability, but causation and damages, too, may be established by the criminal conviction and, therefore, the subject of a motion for summary judgment *Corporacion Insular de Seguros*, 849 F.Supp. at 134 ("[P]laintiff is entitled to summary judgment as to both liability and damages connected with the fraudulent transaction claim").

In this case, the conviction of Defendant Constantino established all of the elements for a judgment as to Count III of the Second Amended Complaint. This includes liability, causation and damages. Count III of the 2nd Amended Complaint was brought under Georgia's RICO Act It alleges the exact same predicate criminal offenses as set forth in Count One of the Indictment upon which Defendant Constantino was convicted.⁵ The substance of this civil action and the criminal prosecution are exactly the same. See, generally 2nd Amended Complaint, Ex. "E"; Indictment, Ex. "B". Based upon the jury's verdict in *State v. Constantino*, this Court has already made express determinations regarding the fraud committed against Cox by Constantino and, by extension, the Corporate Defendants he controlled and used as instruments of the fraudulent scheme. By virtue of the conviction, the following things have been proven as a matter of law:

1. Defendants endeavored to acquire and maintain, directly and indirectly, an interest in and control of Cox's personal property and money through a pattern of racketeering activity, in violation of the Georgia RICO Act (Count One);
2. Defendants committed the offenses of theft by taking in relation to the Caye Bank Scheme in the amount of \$50,000 (Count Three) and \$450,000 (Count Four);
3. Defendants violated the Georgia Securities Act in multiple ways, as part of the Caye Bank Scheme (Count Two), Plantation Villas Scheme (Counts Seven and Eight), and the Plantation Marina and Yacht Club of Belize Scheme (Counts Fifteen through Seventeen);
4. That, as part of the Caye Bank Scheme, Defendant failed to disclose material facts in selling "stock" to Judy Cox (Count Two) when he failed to disclose to Cox that said "stock" was not transferable;
5. That, as part of the Plantation Villas Scheme, Defendants willfully made untrue statements of material fact by telling Cox as follows: (a) that Constantino was investing over one million dollars of his own money in Belize Development Trust II; (b) that the principal of Cox's investment was "guaranteed"; (c) that there was a 42.4% per year return on Cox's investment in four years; and (d) that Cox could not lose money (Count Eight);

6. That Defendants committed the offense of theft by taking in relation to \$650,000.00 of Cox's money in relation to the Plantation Villas Scheme (Count Nine);
7. That Defendant Constantino was not registered to sell these securities, in violation of Georgia law;
8. That none of the Caye Bank Stock securities were registered in Georgia, in violation of Georgia law;
9. That, as part of the Caye Bank Scheme, Defendants took from Cox U.S. currency totaling \$500,000, through two separate installments made on March 5, 2003 and March 11, 2003;
10. That, as part of the "Plantation Villas Scheme," Defendants sold to Judy Cox units in a Belize Development Trust II using a Belize Development Trust II Subscription Agreement;
11. That, through undue influence, deception, false representation and false pretense, Defendants illegally and improperly **exploited** a person over the age of 65 in order to use her money for the profit and advantage of Defendant Constantino (Counts Six and Twelve)
12. Defendants unlawfully took, and caused damages to Judy Cox in the amount of, at least \$2.5 Million.

The prior judgment in the criminal case is final and valid. The Court has entered final judgment. Execution of sentence has begun. The fact that an appeal may be filed does not matter.⁶ The criminal conviction has not been overturned. Defendant Constantino is in prison to this day. By virtue of the criminal trial, Defendant Constantino had a full and fair opportunity to litigate, and fully defend himself against Cox's allegations that he defrauded her.

C. BECAUSE COX'S DAMAGES WERE PROVEN IN THE CRIMINAL PROCEEDINGS, COX IS ENTITLED TO PARTIAL SUMMARY JUDGMENT FOR SUCH DAMAGES AS ESTABLISHED BY [O.C.G.A. § 16-14-6](#)

As a matter of law, Cox is entitled to partial summary judgment as to Count III in the amount of \$7.5 Million. [O.C.G.A. § 16-14-6\(e\)](#) reaches "to all matters proved in the criminal proceeding." This Court has found, in *State v. Constantino*, that Judy Cox suffered damages in an amount of \$2.5 Million. Therefore, Defendants are estopped and barred from claiming they caused damages in any amount less than \$2.5 Million. However, as a matter of law, the judgment to which Cox is entitled is actually larger.

The Georgia RICO Act provides for the trebling of actual damages sustained by a claimant. "Any person who is injured by reason of any violation of [Code section 16-14-4](#) shall have a cause of action for three times the actual damages sustained" [O.C.G.A. § 16-14-6\(c\)](#) (emphasis supplied). Judy Cox's actual damages were among the "proven matters" in the criminal proceeding against Defendant Constantino. Therefore, the clear, plain and unambiguous language of [O.C.G.A. § 16-14-6](#) operates, first, to establish those actual damages by operation of subsection (e) and, second, to multiply them pursuant to subsection (c).

As part of the criminal proceeding, it was specifically proved that Constantino caused damages to Judy Cox in an amount not less than \$2.5 Million. "I find by a preponderance of the evidence that he [Defendant Constantino] owes restitution in the amount of two point five million dollars." Excerpt from Sentencing Hearing Transcript, 32, attached as Ex. "D". This evidentiary finding was the basis for the Court's decision to impose restitution as part of Defendant Constantino's sentence. Where liability and damages have been established, Georgia courts are authorized to award treble damages on a claimant's motion for summary judgment when those damages are established by operation of law.

The case of *Speir v. Krieger*, 235 Ga.App. 392, 509 S.E.2d 684 (1998), is a relevant example. In that case, the trial court awarded summary judgment to a RICO claimant. Secondly, the trial court also found the plaintiff's damages had also been proven as a matter of law. Because the damages were established as a matter of law, the trial court awarded a judgment that was three-

times that amount. [235 Ga.App. at 400](#). On appeal, the defendant challenged both the propriety of summary judgment and the determination that plaintiff's damages could be trebled as a matter of law on summary judgment.

Upholding the trial court on both issues, the Court of Appeals ruled that liability and damages had been established as a matter of law. First, the Court of Appeals affirmed summary judgment to the RICO claimant on the basis of previous judgments entered against the defendant:

A violation of RICO was shown as a matter of law based upon the conclusive, factual determinations contained in the prior Fulton County suits. The trial court's ruling was not error.

[Spier v. Krieger, 235 Ga.App. at 402](#). Next, the Court of Appeals turned to the trial court's determination to treble the plaintiff's damage award.

Here, too, the Court of Appeals affirmed summary judgment as to the trebled damages. "Accordingly, the trial court did not err in applying RICO and trebling the amount of punitive damages awarded to the plaintiff." [Spier, 235 Ga.App. at 402](#).⁷ [Spier v. Krieger](#) establishes that, where a defendant's violation of RICO and a plaintiff's damages thereby have been proven by prior judgments, those damages are subject to trebling, as a matter of law and may be awarded on summary judgment that establishes both liability and damages.

Based upon the clear statutory authority in [O.C.G.A. § 16-14-6](#), as well as case-law interpreting same, there remains no triable issue for a jury as to Count III of the Second Amended Complaint. Cox's entitlement to a judgment in an amount not less than \$7.5 Million stands proven as a matter of law. The only remaining issues to be established at trial are liability on other counts of the Second Amended Complaint, the amount of punitive damages, if any, and the amount of attorney's fees. Therefore, Plaintiff Cox moves for a finding that the facts proven by the conviction of Defendant Constantino during the proceedings in State v. Constantino be established as a matter of law, that the jury be so instructed, and that Cox be awarded partial summary judgment as a matter of law in an amount not less than \$7.5 Million, with said judgment being joint and several as to all Defendants.

CONCLUSION

For the foregoing reasons, Plaintiff Cox asks the Court to GRANT her Motion for Partial Summary Judgment, instruct the jury as to those factual matters established as a matter of law by the criminal conviction, and, finally, to enter a partial judgment in an amount of \$7.5 Million against the Defendants jointly and severally.

This 19th day of March, 2010.

THE BARNES LAW GROUP, LLC

<<signature>>

John F Salter

Ga. Bar No. 623325

Attorney for PLAINTIFF

The Barnes Law Group, LLC

311 Atlanta Street

Marietta, Ga. 30060

Telephone: 770-419-8505

Facsimile: 770-590-8958

Footnotes

- 1 For some time, it appears that the “Corporate Defendants” named in this suit, (at least some of which Cox believes to be fictitious), have not been represented before this Court by any legal representative. Should there be no appearance by counsel in opposition to this Motion for Partial Summary Judgment by legal counsels, the law requires an entry of default judgment regarding such entities. *Temp-N-Around Medical Resources, Inc. v. Avondale Joint Venture*, 248 Ga.App. 231, 546 S.E.2d 23 (2001) (failure to appear through legal counsel subjected corporation to default); *Eckles v. Atlanta Technology Group, Inc.*, 267 Ga. 801, 485 S.E.2d 22 (1997) (corporations must appear through legal counsel); *Winzer v. EHCA Dunwoody, LLC*, 277 Ga.App. 710, 627 S.E.2d 426 (2006) (failure of LLC to appear through legal counsel mandated dismissal of appeal).
- 2 As to some counts of the Indictment regarding the Plantation Marina and Yacht Club of Belize Scheme, the jury deadlocked and failed to return a unanimous verdict. Notably, the jury did not formally acquit Defendant Constantino on any of the twenty-nine (29) counts.
- 3 There were two indictments returned by the grand jury. The original was filed on Feb. 19, 2009. See Certified Copy of Original Indictment, attached as Ex. “A”. A superseding indictment was filed on December 18, 2009. See Certified Copy of Superseding Indictment, attached as Ex. “B”. Unless otherwise noted, all citations to the indictment are to the Superseding Indictment. In addition, where the Statement of Facts cites a Count of the Indictment as a support for a fact, it cites only to those Counts upon which Constantino was convicted and found guilty.
- 4 The collateral estoppel provision in GA RICO employs language that is broader in scope than its federal cousin. “This estoppel provision is substantially broader than its federal counterpart, which merely provides that the defendant shall be estopped from denying the ‘essential allegations of the criminal offense’ in any subsequent civil proceeding brought by the United States.” John E. Floyd, RICO State by State, American Bar Assoc., 295 (1998). Because the language of its federal RICO cousin is more narrow in scope, case-law where federal courts applied collateral estoppel are persuasive legal authority favoring the application of Georgia's comparable, but more expansive, statute.
- 5 *Compare* 2nd Amended Complaint ¶ 42 ((alleging pattern of racketeering activity including acts of theft by taking in violation of O.C.G.A. § 16-8-2, constituting racketeering activity pursuant to O.C.G.A. § 16-14-3(9)(A)(ix), and violations of the Georgia Securities Act in violation of O.C.G.A. §§ 10-5-3, 10-5-5, 10-5-12 and 10-5-24 and constituting racketeering activity pursuant to O.C.G.A. § 16-14-3(9)(A)(xxii)) *with* Indictment, Count One, attached as Ex. “B”).
- 6 “[T]he law is well settled that a judgment is final for purposes of collateral estoppel even if an appeal is pending.” *Corunty of Cook v. Lynch*, 560 F.Supp. 136, 138 n. 1 (N.D. Ill. 1982).
- 7 Interestingly, because the prior judgments at issue in *Spier v. Krieger* contained awards of punitive damages, these awards were trebled, too.

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.